

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

United States of America,

- v. -

Dean Skelos and Adam Skelos,

Defendants.

S1 15 Cr 317 (KMW)

**SENTENCING MEMORANDUM FOR DEAN SKELOS**

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## INTRODUCTION

Defendant Dean Skelos respectfully submits this memorandum in connection with his sentencing scheduled for October 24, 2018. We respectfully refer the Court to the Original Memorandum of March 23, 2016, as it contains a fulsome discussion of Mr. Skelos' life and character.<sup>1</sup> We also include for the Court's consideration a discussion of new letters submitted on behalf of Mr. Skelos, especially to the extent they address relevant conduct pertaining to the period of time after the submission of the Original Memorandum. For the reasons set forth both below and in the Original Memorandum, we beseech the Court's leniency and request, respectfully, that the Court exercise its discretion to impose a sentence of short duration on Mr. Skelos in view of the observations of a wide cross-section of people that Mr. Skelos' life, predominantly devoted to public service, has been marked by his unremitting effort to help and care for others.

As described by U.S. Probation Officer Katrina Minus-Shepherd in her Pre-Sentence Investigation Report of September 19, 2018, "there is no doubt that Mr. Skelos has been zealous in providing care and concern for others in his personal and professional life."<sup>2</sup> This remark, from a disinterested evaluator of the defendant, reflects a central hallmark of Mr. Skelos' life and conduct, present from his earliest days, which he has continued to demonstrate even during these extraordinarily difficult past few years.

Mr. Skelos has extended that "concern for others" even though he has been significantly diminished by his troubles. His health, including severe bouts of depression and serious hearing loss, is in significant decline. As described more fully herein, his public

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<sup>1</sup> The Original Memorandum is attached hereto and cited herein as "Org. Mem."

<sup>2</sup> Presentence Investigation Report of Dean G. Skelos ("DGS PSR"), at 40.

humiliation continues on a daily basis. Importantly, though, that has not stopped his instinct to help others through acts which have included providing a home and emotional and financial support for his ex-daughter in law, Ann Marie Diaz, and her two children.

Yet, the jury has spoken. Mr. Skelos accords great respect to the men and women who decided his fate; we do not seek to excuse or minimize their findings on his behalf. Rather, we ask the Court to consider the whole of Mr. Skelos' life and the punishment the man has already suffered for his conduct.

## **DISCUSSION**

### **I. Personal Background**

The Original Memorandum describes Dean's upbringing in detail. Org. Mem., at 2-8. As Your Honor knows, Dean was raised by a large and loving family after his mother passed away when he was only three years old. Throughout his lifetime, and via all accounts, Dean has returned the family love he was shown by constantly demonstrating care for others. Org. Mem., at 20-24.

Nevertheless, it is Dean's own family which has suffered the most. The overarching heartbreak caused by Adam's troubles is pervasive. It is an unfortunate reality that the strain of this trial has caused a rift between father and son. As the probation officer describes, the situation is "exceptionally sad."<sup>3</sup> Even so, as Dean will unequivocally express to Your Honor at the time of sentence, he still loves his son deeply and greatly regrets that the conduct originally intended to help his son went so awry.

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<sup>3</sup> Presentence Investigation Report of Adam Skelos ("AS PSR"), at 41.

## II. Dean Skelos' Ongoing Commitment to Family

In the aftermath of the first trial, Adam and his then wife Ann Marie divorced. Upon the rupture of that marriage, Dean and his wife assumed responsibility for Dean's two special needs grandchildren, a labor they have shouldered with the love, approval, and expressed appreciation of Adam's ex-wife. Ann Marie describes:

"In June 2016, the boys and I moved in with Dean and Gail Skelos. It was during these two years that Dean, despite all of his legal woes, put the well-being of me and my children first, and saved us. Taking in two boys, a large dog, two cats, and a single mom that just lost everything is no small ask. When Dean took us in, he just shrugged and said "we're family". But people say a lot of things. In the two years that we lived there, Dean showed me what family means. It means that you always show up, that you always follow through, and that is what Dean has done for my two boys. He has become their much needed father figure, disciplinarian, advocate and friend. To the boys, he is their Papou! To me, he is a dad."

*Ann Marie Diaz.*

Adam and Ann Marie have two sons: Dean Jr. and Dylan. Both boys suffer from autism. Dean Jr. is non-verbal. Dylan is verbal, but has other problems associated with the disorder. One longtime friend writes that "[t]hese boys are the love of [Dean's] life. He has never tired of being with them." *Paul H. Durnan*. "A most common sight upon entering the Skelos' home, was one of the boys is sitting on their Grandfather's lap doing puzzles, playing a game or reading a book." *Eva and Ed Watson*. "Dean has been the main father figure to the little boys as well as being their main financial support. Dean is the one who put them on the school bus every morning and was there to help them when they got off the bus." *Carla A. Silverstein*. One friend writes simply that "Dean and Gail have been wonderful grandparents to their two autistic grandsons and their mother." *Rev. Peter G. Young*.

Ann Marie describes the difficulties that she and her family have faced over the last few years. “The aftermath of the first trial was a challenge to navigate on my own, coupled with the struggles of raising two boys with special needs by myself, a divorce, and the sudden passing of my father, Arthur Diaz, all at the same time.” *Ann Marie Diaz*. Adam and Ann Marie were forced to sell their home as a result of the first trial. It is in this most difficult and trying time that Dean showed his character most clearly as he and Gail immediately embraced Ann Marie and their grandchildren. “When they had no place to go, Dean and his wife Gail took them into their home with open arms and supported them financially and emotionally.” *Anastasia Skelos Lester*. As Gail describes:

“Dean stood up for them despite the objections from his son on a daily basis. His priority has been protecting our boys and their mother and easing the horrible transition that had to go through alone. So one adult, two young boys (aged 2 and 3 ½), two cats and one 90-pound dog were moved into our home.”

*Gail Skelos*.

Upon taking in the family, Dean quickly became a day-to-day pillar of support to his grandchildren. “Dean was present, engaged, and involved in every aspect of the boys’ daily world. He became an integral part of their daily schedule from the moment they woke up, until moment they would cuddle for an episode of Peppa Pig before bed. For the first time, my sons had a male role model they could count on for consistency.” *Ann Marie Diaz*.<sup>4</sup>

Raising autistic children is a far more difficult, expensive and emotionally draining process than raising a child unencumbered by extra challenges. Ann Marie explains that “there is nothing typical about the world we live in. Both of my sons are

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<sup>4</sup> “To see the boys sitting on their Papou’s lap every morning and every night and pulling him by the hand up to bed each night to watch Peppa the Pig and fall asleep together is something we will never forget.” *Gail Skelos*.

diagnosed with Autism, with the elder being non-verbal. Both boys struggle with verbal communication. Our walls are decorated with visual schedules and safety reminders. They follow strict schedules and ABA lifestyle (applied behavior analysis) that needs to be followed by all members of the household to keep the boys on task.” *Ann Marie Diaz*. Dean devoted himself – and even adapted his home – to the process. “We turned our basement into a classroom and that is where their therapists would work with them.” *Gail Skelos*. Dean created daily routines and activities with the boys as routine is extremely important to help the children improve and grow emotionally. “He had daily routines with the boys that they all looked forward to. In the morning, it would be a race between the boys to get to Dean first and play a game of candy crush before getting ready for school. In the evening, Dean and Dylan would share a bowl of ice cream while Dean read to [them].” *Ann Marie Diaz*. Neighbors recall: “[w]e watched as Dean would read to them, play with them and teach them to be good men, a role their natural father could not provide.” *Robin Sackstein*.

Ann Marie writes fondly of Dean’s trips to the supermarket with the boys. Someone who has not been around severely autistic children might not recognize immediately how difficult that process can be. Ann Marie describes:

“One of Dean’s favorite pastimes with the boys is taking a special trip to Stew Leonards. Here the boys got to have fun playing with all the singing farm animals and pick out lobsters. My son Dean is fascinated by lobsters. Once home, Dean and the boys would place the lobsters down so the boys could watch them crawl around. Sounds simple enough; however, it takes a lot of patience, care and energy to manage my boys in public due to language barriers, impulsive behaviors and safety concerns, and then to continue to engage with them once home. The smiles on my boys faces when Dean would say they were going to Stew Leonards was priceless. It’s memories like these that stand out to me because of how happy Dean made my boys, how much fun and laughter we were able to have over a simple trip to Stew Leonards.”

*Ann Marie Diaz*.



It may seem a small thing, but, we respectfully submit that it is this is merely the most recent example of the sort of mundane every day and private act of Dean's that best demonstrates the character and make-up of the man.

### **III. The Importance of the Ongoing Relationship Between Dean and His Grandchildren**

Dean and Gail have shown a deep hands-on commitment to the boys' development over the last few years. "From home services where we have been able to work with ABA therapists and BCBAs (Board Certified Behavior Analysts) to manage behaviors, to outside therapies such as access to therapeutic horseback riding (Horseability), sensory gyms memberships, art therapy and music therapy programs, Dean and Gail have helped to provide and participated in these services with us as a family." *Ann Marie Diaz*. Their efforts have borne fruit as well. "The progress monitoring data collection from our Behavioral team show us that the boys are growing – at their own rate – because of these services and consistency at home." *Id*.

Ann Marie and the boys "relocated to Florida this past May to avoid the publicity of the current trial." *Ann Marie Diaz*. This has been one of the most wrenching events Dean has faced throughout this process. "We watched as the moving van pulled up, to move [Ann Marie], and his grandsons to another State so that they could be physically safe and have a fresh start. Although this hurt him deeply, he did it stoically, in a strong supportive manner, both emotionally and financially." *Robin Sackstein*.

Dean has dedicated himself to maintaining as much contact with the boys as possible. Each day he sets aside time to FaceTime with them for a video chat and story. Dean and Gail have also spent much of the time since trial in Florida in an effort to be with the boys. Friends describe that "Dean and Gail make extraordinary efforts to remain an

integral part of the [boys'] lives through technology mediums such as [FaceTime] and through extended visits to their new home." *Eva and Ed Watson*.

This contact is instrumental in the boys' development. As the probation officer and Ms. Diaz both describe, continuity is (and has been) incredibly important to the emotional development of the boys. DGS PSR, at 19; *Ann Marie Diaz*. The science on this issue is well established:

"One of the primary diagnostic criteria for autism spectrum disorder (ASD) as outlined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) is that the individual shows restricted, repetitive patterns of behavior, interests, or activities. And one of the key items of evidence to support the diagnosis is an insistence on sameness and an inflexible adherence to routines... Any deviation from any of these particulars, even one almost undetectable to a neurotypical individual, can result in enormous anxiety and tantrums from an ASD patient . . . [A]ny sort of change is a major cause for alarm."<sup>5</sup>

Dean and Gail have also committed themselves to the boys' emotional development long term. Dean Jr. was recently accepted to a cutting-edge program at Duke University to help improve his ability to speak. Dylan is on the waiting list for the program. "Since the first clinical trial, there have been tremendous results that have led to additional rounds of the program being scheduled. Parents and doctors report that participants in his clinical program exhibit reduced behavioral issues, as well as increased verbal skills and social capacity/awareness." *Ann Marie Diaz*.

Each Duke University treatment costs \$15,000 before the expenses of travel, housing, follow-up and medication. The treatments can happen as frequently as monthly depending on the needs of an individual patient. Dean and Gail have committed to pay for

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<sup>5</sup> See "Why Is Routine So Important to People with ASD?" accessed at <https://www.appliedbehavioranalysis.edu/why-is-routine-so-important-to-people-with-asd/>.

these treatments for as long as they are able. “Dean is determined to give his grandson the gift of speech and will spend whatever money we have to make this happen.” *Gail Skelos*.

Despite Dean and Gail’s best efforts, both boys have faced “tremendous setbacks” since the move to Florida and the changes in their routines. *Ann Marie Diaz*. “School has just begun and we are resuming private services for after school and weekends to help create a new norm for the boys that helps them work toward their IEP and communication goals. Respectfully, without Dean and Gail’s financial support none of these things would be possible.” *Id.* Gail describes that “each day they are still saying they miss Papou. It is heartbreaking.” *Gail Skelos*.

It had been Dean and Gail’s plan to move to Florida to be with Ann Marie and the grandchildren after the trial. It remains their plan to do so as soon as Dean is able. *See Gail Skelos*.

“Now these little boys face the prospect of losing an important positive male figure in their lives.” *Anastasia Skelos Lester*. As Dean’s neighbor argues, Dean “is instrumental in the raising of his grandsons.” *Robin Sackstein*. As one friend pleads “[t]hese two little boys have suffered enough! They cannot lose their Grandfather!” *Donna Gallo Langan*. John Conway fears that, as the only male influence in the lives of his grandsons, “[t]heir futures will be tragically impacted if that are separated from Dean.” *John J. Conway, III*. “Please look deep into your heart for empathy and kindness for these boys.” *Gail Skelos*.

A prolonged period of incarceration would risk even more severe setbacks for Dean Jr. and Dylan; and an onerous fine would make it impossible for Ann Marie to afford

the necessary treatments to improve the health of her boys.<sup>6</sup> Accordingly, we respectfully request that the Court consider sentencing options which would minimize any period of separation between Dean and his grandchildren so that he might continue, as meaningfully as possible, to assist in their health, education and development.

#### IV. Dean Skelos' Health

The disintegration of Dean's relationship with Adam and of the close knit bonds of his family have had a negative impact on Dean both emotionally and physically. Dean Skelos is now 70 years old. His health and well-being have declined markedly since the first trial. His already poor hearing has deteriorated<sup>7</sup> and his struggles with depression have deepened. "We saw first hand the emotional and physical toll this all has taken on Dean and Gail, and have been there to console and comfort them in times of crises." *Robin Sackstein*. Dean has long required psychiatric treatment and has been prescribed anxiolytic and anti-depressant medications for many years. *Douglas Marcus, M.D.* The mental and emotional toll of these trials has been stark and extreme.

Dean has struggled for decades with clinical depression. Dean's current psychiatrist<sup>8</sup> describes his mental health history:

"Developmental and clinical history was significant for father's death 3 months ago at age 97, a son with significant substance abuse and psychiatric

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<sup>6</sup> We note that the probation officer has recommended a fine of \$100,000. We respectfully urge the Court to reconsider the amount of the fine originally imposed. Dean Skelos' conduct since the first trial has further demonstrated that he is not a person motivated by personal aggrandizement. As a practical matter, an excessive fine will impact Dean and Gail's ability to continue to support Ann Marie and her two sons. Additionally, a fine of significant magnitude will effectively punish Gail Skelos, who had her own career in public service, in her retirement years. For these reasons, we respectfully request that the fine recommended by the probation officer is sufficient, but not greater than necessary to serve the interests in this case.

<sup>7</sup> "The defendant suffers from hearing loss in both ears, and he wears hearing aids. His hearing reportedly has become much worse since 2016." DGS PSR, at 40.

<sup>8</sup> Dean's prior psychiatrist, Dr. Constantine A. Haliasos, M.D., wrote about Dean's treatment subsequent to the first trial. *See* DGS PSR, at 21-22. He has since retired and Dean has sought treatment with Dr. Marcus.

history, possible bipolar with psychiatric hospitalizations. Patient had a prior psychiatric treatment history through his primary care clinician, with anxiolytic and anti-depressant medications. He has also been in prior psychotherapeutic treatment.”

*Douglas Marcus, M.D.*

The toll of the trials and the erosion of his relationship with Adam have only exacerbated Dean’s condition. Dr. Marcus further describes his current observations of Dean’s mental health:

“[P]atient presented with a significant symptomatic profile including a waxing and waning of mood swings, social isolation, insomnia, dysphoria, anhedonia, crying jags and overall despondency. He denied suicidal intent and or plan but acknowledged that in recent times, the legal complexities that haunted him profoundly shook his sense of well-being and aggravated his guilt, anxiety and conflicted relationship with his [adopted] son.”

*Id.*

He notes that on follow-up visits Dean “presented as forlorn and regretful” and that his mood “was labile with occasional crying jags.” *Id.*

Dean has come to struggle with alcohol issues. The probation officer describes that “[t]he defendant admitted that after his ex-daughter-in-law and the children moved to Florida, he began to consume at least one martini and a couple of glasses of wine daily. Skelos admitted that he has become dependent on alcohol and expressed that he believes that he would be ‘more anxious and unable to sleep’ if he did not drink. The defendant stated that he has recently come to realize that his use of alcohol may now be considered a problem which he should address.” DGS PSR, at 22. “[Gail Skelos] stated that Skelos has been consuming alcohol daily.” DGS PSR, at 20. The probation officer recommended that Dean “be provided alcohol treatment as deemed necessary by the BOP

while in custody, and that he be required to attend out-patient alcohol treatment upon his release from custody.” DGS PSR, at 43.

**V. Dean Skelos Has Already Suffered Severe Consequences for His Conduct**

Dean’s neighbor Robin Sackstein perhaps describes it best:

“throughout the years we have watched as he lived his life modestly with humility and has always tried to lead by example. We watched, as he would leave his family to attend his duties as our State Senator with selfless devotion to the community, that resulted in so many beneficial programs and improvements to our community. We watched as he built a solid career and name for himself. We watched as he tried endlessly to provide a stable home for his adoptive and troubled son. We watched, as extended family would gather regularly for family dinners and celebrations. Then we watched as it all began to slip away.”

*Robin Sackstein.*

Ms. Sackstein continues:

“We watched as Dean and Gail opened their home to their daughter-in-law, Ann Marie, along with her two autistic children, their grandsons, to ensure that they had a safe home and stable environment to develop in. We watched as Dean would read to them, play with them and teach them to be good men, a role their natural father could not provide. We watched, as the police would sometimes be called because of the erratic behavior of his son. We watched as the moving van pulled up, to move Ann Marie, and his grandsons to another State so they could be physically safe and have a fresh start. Although this hurt him deeply, he did it stoically, in a strong supportive manner, both emotionally and financially. We watched as his name was taken down from the sports complex he worked so hard to get for our community. We watched as he lost all that was important to him.”

*Id.*

Dean’s family has also witnessed his decline first hand:

“Dean and I are almost 14 years apart so I have always admired him and I still do. He was the brother I looked to for guidance, but I see a different person than I have known my entire life. Now he is merely a hollow shell of a person. He no longer wants to leave his home, he prefers to be surrounded only by his family and his small close circle of friends. Even then, he mostly stares into space fixated on spending his last years in jail, instead of enjoying life with his devoted wife, his family and most of all, his precious grandsons

that he, like any grandparent, adores and wants to watch grow up. Now, he is terribly depressed because he has nothing to look forward to.”

*Penelope Skelos Michelis.*

“Since 2015 when he was initially indicted, he has become basically a recluse who is embarrassed to be seen in public. This has been a self imposed jail sentence.” *Carla A. Silverstein.* Friends have seen the change in his personality as well. “Once a vibrant, social, charming individual Dean is now a broken man with little social interactions.” *Nancy A. DiBrita.*

Simply, the consequences of this ordeal have been devastating for Dean. “Dean’s livelihood (and politics was his life), has been taken from him; his ability to practice law was taken from him; his name, his legacy and all his accomplishments have been mitigated and minimized; in essence, his life was taken from him. Over these past four years, I’ve seen a man defamed of his very essence and suffer beyond what most folks can ever imagine.” *Donald R. DiBrita Sr.* We respectfully submit that a sentence could be fashioned which would benefit the public and restore a sense of purpose and health to the man by exploiting that instinct to care of others. “From my personal experience of forty years of working in a major leadership position in the Prison System, I am sure that society would best benefit for him to continue to help others through community service using his own personal experience to best benefit others.” *Rev. Peter G. Young.*

## **VI. Dean Skelos Has Dedicated His Life to Public Service**

### **A. Legislation**

As described in the Original Memorandum, Dean has dedicated virtually his entire adult life to public service. Not only does he have numerous historic accomplishments to his name, but he achieved those goals by successfully engaging and

collaborating with both colleagues and rivals while avoiding rancor. We respectfully refer the Court to Mr. Skelos' Original Memorandum which describes in detail Dean's lengthy and outstanding record in public service. Org. Mem., at 9-15.

It bears emphasis that many of Dean's signature achievements stand out even more boldly today than they did two and a half years ago. For example, in the face of dramatically rising prices, the Elderly Pharmaceutical Insurance Coverage (EPIC Program) allows hundreds of thousands of senior citizens access to affordable prescription drugs; the SAFE Act, which remains one of the strictest gun control law in the country, has become a nationwide example of reform; Megan's Law, which has become a by-word for protection against predators, requires the registration of sex offenders in online databases and other initiatives; the removal of the rape statute of limitations enables offenders to be prosecuted without the constraint of time; and the Women's Equality Act spearheads women's rights initiatives including achieving equal pay, protecting the victims of domestic violence and ending pregnancy discrimination in workplaces. We believe it should also be highlighted that the protection of senior New Yorkers was always central to Dean's legislative initiatives. Org. Mem., at 12.

Beyond his legislative efforts, Dean's felt it was critical that underrepresented segments of the community had a voice in New York State politics. In a recent letter, Mr. Welquis Lopez recalls:

"I have experienced first hand his empathy and compassion to help out the community, specifically my community (hispanic community). In 2010, former Senator Skelos teamed up with the Hispanic Federation and Molloy College to form the Unidad Latina Conference (ULC). Senator Skelos was the driving force behind this conference. He met with important hispanic leaders and asked them to participate in this conference. This was the first time that the NY Senate sponsored a Hispanic Conference. We brought in — — Hispanics into one room to discuss hard topics, to network, to make



ourselves familiar to one another for support etc. The Unidad Latina Conference was comprised of Hispanics who worked for some of the top Fortune 500 Companies as well as small local hispanic owned businesses, government officials and organizations. He recognized their efforts in the community. The ULC also raised funds for 15 scholarships for students. I was given the responsibility to work with all parties involved in the conference and bring in the Hispanics who work in these Fortune 500 companies and businesses. Keynote speakers touched based on real topics that affect the community like employment, immigration, teen suicide and housing. The speeches were raw and emotional. It was a great way to truly hear and understand the real issues and struggles facing the Hispanic Community. This Conference was such a success, it was done for the next 5 years. Senator Skelos really showed his compassion and support for our growing community. Within 5 years, \$400,000 was raised for scholarships. Every year the conference continue to be a platform to bring real issues to the table, giving activist, mentors and businesses a chance to be transparent and speak about their mission for change within the community.”

*Welquis Lopez.*

#### **B. Service to the Community**

Dean’s legislative achievements are complemented by the one-on-one time he regularly spent with community members – which is particularly uncommon given his senior position. Among others, Senator Alfonse D’Amato has underscored this commitment on multiple occasions. Most recently, Senator D’Amato explained “[h]e was outstanding. He responded to his constituents’ needs. [Nothing] was too small or too difficult for him, whether it was a local fire department that had a need, whether it was a project to clean up an area. He was always mindful of the tremendous burden that the school taxes constituted and therefore was always working to increase funding for the schools. He was outstanding.” Tr., at 1929-1930.<sup>9</sup> One constituent remembers Dean’s crucial support of a nascent domestic violence program:

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<sup>9</sup> Senator D’Amato wrote an article about Dean’s achievement in the Long Island Herald shortly after Mr. Skelos had been charged in this matter. Senator D’Amato wrote that “Skelos’s extensive list of

Dean Skelos also supported our Domestic Violence Program, a much needed service in the community. With his support, we obtained the seed funding to start a yearly “Walk to End the Silence on Domestic Violence,” on the Long Beach boardwalk. We started this five years ago and have continued to hold the walk each October. The day of the walk we post large informational cardboard plaques, in English and Spanish, which feature information about domestic violence including statistics. The plaques also have artwork from children and from victims of domestic violence. They are left up throughout the day for individuals in the community to see so that awareness can be raised about domestic violence. We are grateful to Dean Skelos for helping to support this important cause as well.

Dean Skelos’s level of compassion with those in need and his high commitment to support the right causes in his community without political gain is to be commended.

*Gil Bernadino.* As another recent letter from one New York State congressional colleague describes, “Dean had an unblemished career for 35 years in the Senate. Dean cared about people, he worked very hard for his constituents, passed legislation that no one could be denied Hospice Care; helped college students in the administrative process, etc.” *Donna Gallo Langan.* See, also, Org. Mem. at 20-24 (describing service to the community).<sup>10</sup>

## **VII. Acts of Kindness and Compassion**

Public achievements aside, Dean was best noted in the community and amongst those who knew him best for his small, non-public acts of kindness and compassion. As described in the Original Memorandum:

“From giving the keys to his house to a family faced with a medical emergency, (*Donna and Bruce Zides*), to the countless letters describing his emotional support during times of death and mourning of family members, (*Marie Gange; Lewis Bazakos; Francis Patience; Beatrice Armony; Charles Casolaro; Olga Gazonas*), to his mentorship and guidance to so many young people,

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accomplishments could match or surpass that of any elected official in the history of New York state.” *Thank You Senator Skelos*, Long Island Herald, May 28, 2015.

<sup>10</sup> See, e.g., *Elizabeth Finlay; Frank Alevva; Justine DiBrita; Jeffrey Greenfield; Angelo Siconoff; Marguerite Peugeot; Lois Beedenburger; Eileen Dahlem; Elizabeth Finlay; Henry Hastava; Joan and David MacNaughton; Rabbi Mordechai Kamenetzky; Angelo Siconolfi; Jean Profeta; Peter Skelos.*

*(Russell Newkirk; John and Karole Rapant; Thomas Dunham; Frank Alleva; Diane Burman)*, Mr. Skelos’ ongoing compassion for the suffering and needs of others and his willingness to extend not only the services of his office but also his personal hand of friendship can only be described as extraordinary. These acts of kindness were far removed from any press release and campaign trail and were extended to all.”

Org. Mem., at 29.

Despite his personal difficulties, Dean “continues to think of others before himself as evidenced by all that he has done and continues to do for Ms. Diaz and his grandsons, their sister who recently had a stroke, and numerous others.” DGS PSR, at 20. There are dozens more such acts described in the letters and in the Original Memorandum. Org. Mem., at 29-35. From Christmas Eve hospital visits to running birthday parties for the children of friends delayed overseas to acting as a “second father,” there can be, as the Probation Report concluded, “no doubt” that Dean is defined by his compassion and generosity of spirit. *Id.*; DGS PSR, at 42.

## LEGAL ANALYSIS

### **I. An Application of the 18 U.S.C. 3553(a) Factors Strongly Supports a Variant Sentence**

Although the Court must consider the Guidelines calculation as part of the sentencing process, the Guidelines are advisory only and merely “serve as one factor among several courts must consider in determining an appropriate sentence.” *Kimbrough v. United States*, 552 U.S. 85, 90 (2007). Courts are permitted and encouraged to “consider every convicted person as an individual and every case as a unique study in human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Gall v. United States*, 552 U.S. 38, 50, 52 (2007). The nature and circumstances of this offense and the history and characteristics of Mr. Skelos strongly support a variant sentence that would

enable Mr. Skelos to be removed from his family and community for the shortest possible duration. 18 U.S.C. § 3553(a).

Both the number and content of the scores of letters written in support of Mr. Skelos establish beyond doubt that he is a person of exceptional character who has shown a life-long concern for the needs and well-being of others.<sup>11</sup> The probation officer confirms:

“More than 180 family members, friends and associates provided written statements attesting to Skelos’ good character, generosity, and caring nature. It appears that in the more than 30 years that Skelos had been a New York State Senator, he has done a tremendous amount of good for his [constituents] and others in need. More recently, Skelos has exhibited his generous nature by providing a home and services to his ex-daughter-in-law and his grandsons, who both suffer from autism.”

DGS PSR, at 40.

In this circumstance, the conduct for which Mr. Skelos stands to be sentenced sharply deviates from a life of dedicated service and good works. As such, it is wholly aberrant in character. We respectfully request that Mr. Skelos’ lifetime of demonstrated decency to others receive overriding credit as establishing a compelling (and merited) basis for leniency. As the probation officer describes in recommending a downward variance:

“His advanced age, physical health, emotional health, and his charitable and good services are also considered in this recommendation. We recognize that Skelos’ conduct of taking on a “parental” role for his grandsons, even when faced with these pending legal matters, is admirable and should be

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<sup>11</sup> See, e.g., Ann Marie Diaz; Gail Skelos; Robin Sackstein; Fr. Joakim Valasiadis; Carla Silverstein; Charles Silverstein; Michael McGuiness; Thomas Lester; Kelly McCready; Beatrice Armony; Frank Alleva; Don DiBrita; Elizabeth Finlay; Olga Gazonas; Marie Gange; Francis Patience; Lewis Bazakos; Robert Mujica; Deborah Bass; Charles Casolaro; Marie Gange; Welquis and Miriam Lopez; Peter Michelis; Faith Skelos; Barbara Drago; Paul Durnan; Rabbi David Zwiebel; Jean Profeta; Jeffrey Harrington; Rita Orefice; Robert Mujica; Beatrice Armony; Justine DiBrita; Welquis and Miriam Lopez; Kelly McReady; Margaret Martinez Malito; Constantine N. Katsoris; William Adelhelm; Anastasia Skelos Lester; Lois Beedenbender; Dennis and Janet Corbi; Patricia Banhazl; Lewis Bazakos; Olga Gazonas. Org. Mem., at 22-23 (“These acts of kindness were far removed from any press releases and campaign trail and were extended to all. The letters on his behalf describe Mr. Skelos as “exceptional,” “honest,” “unselfish,” “admired,” “kind-hearted,” “generous,” and “compassionate.”).

acknowledged. Additionally, we do not believe that Skelos poses a risk to the community.”<sup>12</sup>

DGS PSR, at 40.

The Probation Office has recommended a downward variance. For the many reasons described in this memorandum and the accompanying letters, we respectfully submit that a further downward variance is warranted.

No one who has witnessed the very public fall and tragedy of Dean Skelos would deny that his conduct has already wrought a terrible punishment. *See, supra*, pp. 11-12. Mr. Skelos has lost nearly everything dear to him. He has lost his reputation, his ability to serve the community, his grandchildren who have moved away and been forced to start over, his relationship with his son, Adam, and his good health, which has given way to serious depression.<sup>13</sup> Because the significant negative and public consequences that Mr. Skelos has endured, and will continue to endure, serve as powerful deterrent, both generally to others, and specifically to Mr. Skelos, we respectfully submit that a prolonged prison sentence does not serve a constructive legal or personal purpose.

## **II. The Avoidance of Unwarranted Sentencing Disparities**

Furthermore, in view of Mr. Skelos’ aforementioned extraordinary public and private service, we submit that few public corruption cases, if any, have more persuasive mitigating factors. That said, the case which most involves a “defendant with a similar

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<sup>12</sup> Mr. Skelos poses no risk to society or of recidivism and, thus, there is little reason to sentence him in any part based on a need to “protect the public from further crimes of the defendant.” 18 U.S.C. § 3553(a)(2)(C); *United States v. Adelson*, 441 F. Supp. 2d 506, 514 (S.D.N.Y. 2006).

<sup>13</sup> As a result of the trials and publicity (and the reality of internet searches), Ann Marie has chosen to legally use her last name, Diaz, for Dean Jr. and Dylan in the future. Dean understands and supports her decision in the best interest of the boys, but it is extremely difficult for him to see the legacy of his name wiped away because of his errors in judgment.

record who [was] found guilty of similar conduct” is *United States v. Robert F. McDonnell*, No. 3:14-cr-12 (E.D.Va. Jan. 6, 2015). 18 U.S.C. § 3553(a)(6).<sup>14</sup> There, as here, a family relationship was intrinsic to the corruption charges and also, as here, Mr. McDonnell testified on his own behalf. Fairly viewed, the conduct in *McDonnell* was of a different character: it included 5<sup>th</sup> Avenue shopping trips, a Rolex watch, vacations, undocumented “loans,” yacht rentals, and the use of Ferraris by McDonnell himself.<sup>15</sup> There, the sentencing Court rejected the government’s request for a lengthy sentence, and instead imposed a sentence of 24 months on Mr. McDonnell. The Court based its sentence on Mr. McDonnell’s many years of public service, exceptional character and good works, both in public and particularly in private, factors which are indisputably present here – and exist here with even greater force. Accordingly, we respectfully submit that the period of incarceration for Mr. Skelos be no greater than that imposed on Mr. McDonnell, and that such a sentence would be “sufficient, but not greater than necessary” to satisfy the interests of justice in this case. *See also United States v. Renzi*, 4:08-cr-00212 (D.Ariz. Oct. 28, 2013) (36-month prison sentence after being convicted of supporting federal land exchange legislation in exchange for personal benefits more extensive than at issue here).

We will not burden the Court by re-describing the community service projects discussed in the Original Memorandum, except to say that all of those organizations have enthusiastically indicated an ongoing willingness to work with the probation department to fashion an appropriate community service program to serve as an element of Mr. Skelos’ sentence. Org Mem., at 43-45. However, if Your Honor deems it appropriate to impose

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<sup>14</sup> “The court, in determining the particular sentence to be imposed, shall consider . . . the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6).

<sup>15</sup> *See United States v. McDonnell*, 792 F.3d 478, 486-494 (4th Cir. 2015) (describing conduct).



community service, Mr. Skelos respectfully requests that he be able to perform any such service in the Jacksonville area of Florida so he can be near his grandchildren.

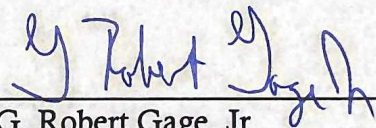
### CONCLUSION

Mr. Skelos is a 70-year-old man, whose two special needs grandchildren would suffer by his incarceration, and who is very favorably positioned to provide positive contributions to his community. For the foregoing reasons, we respectfully submit that an application of the 18 U.S.C. § 3553(a) factors strongly supports a sentence which balances an appropriate penalty with a lifetime of good works and concern for others.

Dated:           October 12, 2018  
                    New York, New York

Respectfully submitted,

By:

  
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